

BEFORE THE  
BOARD OF PODIATRIC MEDICINE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation )  
Against: ) No. D-4537  
)  
VINCENT R. GERARDI, D.P.M. ) OAH No. L-55426  
1734 N. Riverside Ave., Suite 4 )  
Rialto, CA 92376 )  
)  
Podiatry Certificate No. E-2258 )  
)  
Respondent. )  
\_\_\_\_\_ )

DECISION

The attached Proposed Decision of the Administrative  
Law Judge is hereby adopted by the \_\_\_\_\_ Board of Podiatric  
\_\_\_\_\_ Medicine as \_\_\_\_\_ it's \_\_\_\_\_ Decision in  
the above-entitled matter.

This Decision shall become effective on June 11, 1992.

IT IS SO ORDERED May 12, 1992.



KAREN MCELLIOTI, President  
BOARD OF PODIATRIC MEDICINE

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Respondent.	)	
	)	

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PROPOSED DECISION

On March 3, 1992, in Riverside, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Barry D. Ladendorf, Deputy Attorney General, represented complainant.

Respondent represented himself.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

James Rathlesberger, Executive Officer of the Board of Podiatric Medicine of the State of California (hereafter, "BPM"), filed Accusation and Petition to Revoke Probation and Order the Previously Stayed Revocation No. D-4537 on June 11, 1991, in his official capacity. Respondent filed his Notice of Defense on July 1, 1991.

II

Respondent was issued license number E-2258 to practice podiatric medicine by the BPM on June 15, 1978, and at all relevant times, the certificate was in full force and effect.

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III

On October 10, 1986, in a case entitled "In the Matter of the Accusation Against: Vincent R. Gerardi, DPM," the Executive Officer of the BPM filed Accusation No. D-3557 against respondent alleging he was guilty of gross negligence, incompetence, excessive use of diagnostic procedures, and excessive use of treatment procedures in connection with his treatment of two patients during 1982 and 1983.

On October 6, 1987, the BPM adopted as its Decision a Stipulation for Settlement and Decision. The Stipulation had been signed by respondent on May 28, 1987. In the Stipulation, respondent admitted the allegations of wrongdoing alleged in the Accusation. The Decision contained an Order which provided in relevant part:

"Podiatry Certificate No. E-2258 heretofore issued to respondent Vincent R. Gerardi is revoked; provided, however, said revocation is stayed for a period of five (5) years, during which time respondent shall be placed on probation upon the following terms and conditions:

". . .

"B. Within 90 days of the effective date of this decision, and for the first two years of probation, respondent shall submit to the BPM for its prior approval an educational program or course related to surgical techniques, and/or the diagnosis and treatment of infections which shall not be less than 50 hours per year. For the remaining 3 years of probation said program or course shall not be less than 25 hours. This program shall be in addition to the Continuing Medical Education requirements for re-licensure.

"Following the completion of each course, the BPM or its designee may administer an examination to test respondent's knowledge of the course.

". . .

"E. Respondent shall submit quarterly declarations, under penalty of perjury, on forms provided by the BPM, stating whether there has been compliance with all the conditions of probation.

"F. Respondent shall comply with the BPM's probation surveillance program.

". . .

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"J. If respondent violates probation in any respect, the BPM, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the BPM shall have continuing jurisdiction until the matter is final, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against respondent.

"K. Respondent shall submit satisfactory proof annually to the BPM of compliance with the requirement to complete fifty hours of approved continuing medical education for re-licensure during each two (2) year renewal period."

#### IV

Daniel Goldsmith, an investigator with the Medical Board of California, was assigned to act as respondent's probation surveillance officer. He first met with respondent and a BPM consultant on May 6, 1988. At that meeting, Goldsmith gave respondent a copy of the Decision and the consultant explained the terms and conditions of probation to respondent. Respondent was advised of the requirement he must submit quarterly reports. Respondent signed a "Notice" which described this requirement, and acknowledged he was given forms for the quarterly declarations. The "Notice" advised respondent his quarterly reports were due prior to the 10th day of March, June, September, and December each year of probation, and failure to comply with this requirement is a violation of probation which constituted grounds for administrative action to revoke probation and carry out the Disciplinary Order which had been stayed. The consultant explained to respondent the importance of these reports.

#### V

Prior to May 6, 1988, respondent had not filed any quarterly reports. On May 6, 1988, respondent was permitted to file two quarterly reports which were dated December 10, 1987 and March 10, 1988. Thereafter, between June, 1988, and March, 1992, respondent did not file any quarterly reports.

#### VI

Respondent did not submit to the BPM for its prior approval any educational program or course related to surgical techniques and/or the diagnosis and treatment of infections. Respondent did not take any such programs or courses. Respondent

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was required by the terms of his probation to take 50 hours per year of such programs or courses for the first two years of probation, and 25 hours per year for the remaining three years of probation.

#### VII

Respondent submitted proof to the BPM that during the year 1990, he obtained 52 hours of credits of continuing education. Respondent did not submit any proof to the BPM of continuing education courses he may have taken during 1987, 1988, 1989, 1991, or 1992.

#### VIII

Respondent did not maintain contact with Goldsmith and did not advise him of his current address. On December 7, 1988, Goldsmith met respondent outside respondent's office in Rialto, California. The office appeared closed. This meeting was at Goldsmith's request and was to advise respondent he had not satisfied a condition of probation which required him to pay the BPM \$1,500.00 in costs. They also briefly discussed respondent's obligations to submit the quarterly reports and proof of continuing education.

Thereafter, Goldsmith lost contact with respondent. Goldsmith wrote letters to respondent which respondent did not answer. Respondent changed his telephone number and did not advise Goldsmith of that change. In fact, respondent moved to Yucca Valley and began practicing podiatry with another practitioner without advising Goldsmith.

Goldsmith found respondent in Yucca Valley and went to his office unannounced on May 3, 1990. Goldsmith asked respondent why he had lost contact. Respondent said he had been out of podiatry and did not feel he could comply with the terms of probation because of his financial situation. Respondent said he was indigent. They discussed the quarterly reports, continuing education, and losing contact. Respondent did not tell Goldsmith he would comply with the terms and conditions of probation in the future. He said he was sorry, he had financial difficulties and was just getting back on his feet, he was then working for Dr. Stanton Leemon and hoped to buy him out, and understood he was subject to the terms and conditions of his probation.

#### IX

Respondent became a podiatrist in 1970, practicing in New York for six or seven years, and one year in Pennsylvania, before coming to California in 1978. He maintained a practice

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until financial difficulties resulted in the Internal Revenue Service seizing all the assets of his practice on November 21, 1988. He did not practice again until mid-1990.

Between April and August, 1990, respondent worked part-time for Dr. Jackson in Redlands. He moved to Joshua Tree, California, and began working for Dr. Leemon part-time in September, 1990. He remained there until March, 1991. He has not practiced podiatry on any organized basis since that time. He is presently unemployed.

Respondent explained he failed to comply with the requirements for taking continuing education because he could not afford to take the courses. He explained he did not submit the quarterly reports because he did not want to reveal he was not complying with the other terms of his probation. He felt he was "damned if he did and damned if he didn't."

X

Respondent did not submit any evidence of rehabilitation. He blames his troubles on his inability to obtain a hearing to contest the charge originally filed against him in the accusation, his failure to obtain discovery from the Attorney General during the course of that proceeding, the vindictiveness of a podiatrist who drove him out of practice in Yucca Valley, his lack of financial resources, stress which resulted in the breakup of his marriage and loss of his children, and the BPM for not finding him continuing education courses to take. Respondent is unable to place the blame for his troubles where it belongs--on himself. His explanations for his failure to comply with the terms and conditions of probation are unsatisfactory. Despite his protestations, he does not have much interest in his profession, and that lack of interest was manifested in his inability to comply with the simplest of requirements, that of submitting a quarterly report.

Respondent has presented no evidence to suggest continuing him on probation would result in compliance with the obligations of his profession or with the terms and conditions of probation. He views the BPM as an adversary. He made no effort to obtain any help from the BPM or Goldsmith in finding continuing education classes to take or to obtain a waiver of any of the requirements because of a lack of funds to pay for the courses. The public would not be adequately protected by allowing respondent to continue practice podiatry at this time.

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DETERMINATION OF ISSUES

Cause to revoke respondent's probation and order the previously stayed revocation was established for violation of conditions B, E, F, and K of the Order set forth in the Stipulation for Settlement and Decision of October 6, 1987, by reason of Findings III, IV, V, VI, VII, VIII, and X.

ORDER

License number E-2258 issued to respondent Vincent R. Gerardi, D.P.M., is hereby revoked.

Dated: March 18, 1992

  
\_\_\_\_\_  
ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

ASM:ss

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 ROY W. HEWITT,  
Deputy Attorney General  
3 Department of Justice  
110 West A Street, Suite 700  
4 San Diego, California 92101  
Telephone: (619) 237-7134

5 Attorneys for Complainant

6  
7 BEFORE THE  
8 BOARD OF PODIATRIC MEDICINE  
9 DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA  
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12 In the Matter of the Accusation  
Against:

) NO. D-4537  
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13 VINCENT R. GERARDI, D.P.M.  
14 1734 N. Riverside Ave., Suite 4  
Rialto, California 92376

) ACCUSATION AND PETITION  
) TO REVOKE PROBATION AND  
) ORDER THE PREVIOUSLY  
) STAYED REVOCATION  
)

15 Podiatry Certificate No. E-2258  
16

17 Respondent.  
)  
)  
)

18 COMES NOW Complainant James Rathlesberger, who as  
19 grounds for revocation of probation of Podiatry Certificate  
20 No. E-2258, alleges:

21 1. Complainant is the Executive Officer of the  
22 California State Board of Podiatric Medicine (hereinafter the  
23 "Board") and makes and files this accusation and petition to  
24 revoke probation solely in his official capacity.

25 LICENSE STATUS

26 2. On or about June 15, 1978, Podiatry Certificate  
27 No. E-2258 was issued by the Board to Vincent R. Gerardi, D.P.M.



1 (hereinafter "respondent"). On or about May 28, 1987, as a  
2 result of the filing of an accusation against respondent,  
3 respondent entered into a stipulated settlement. Pursuant to the  
4 stipulated settlement respondent's license was revoked. The  
5 revocation was stayed and respondent placed on probation for five  
6 years commencing October 6, 1987.

7 PROBATION TERMS AND CONDITIONS

8 3. This accusation and petition for revocation of  
9 probation is made on the basis of the following pertinent terms  
10 and conditions of the stipulation for settlement and decision  
11 entered into between respondent and the Board of Podiatric  
12 Medicine on May 28, 1987, in case No. D-3557:

13 "Podiatry Certificate No. E-2238 [sic] heretofore  
14 issued to respondent Vincent R. Gerardi is revoked;  
15 provided, however, said revocation is stayed for a  
16 period of five (5) years, during which time respondent  
17 shall be placed on probation upon the following terms  
18 and conditions:

19 ". . . . .

20 "B. Within 90 days of the effective date of this  
21 decision, and for the first two years of probation,  
22 respondent shall submit to the BPM for its prior  
23 approval an educational program or course related to  
24 surgical techniques, and/or the diagnosis and treatment  
25 of infections which shall not be less than 50 hours per  
26 year. For the remaining 3 years of probation said  
27 program said program or course shall not be less than

1 25 hours. This program shall be in addition to the  
2 Continuing Medical Education requirements for  
3 re-licensure. . . ."

4 ". . . . .

5 "E. Respondent shall submit quarterly  
6 declarations, under penalty of perjury, on forms  
7 provided by the BPM, stating whether there has been  
8 compliance with all the conditions of probation.

9 "F. Respondent shall comply with the BPM's  
10 probation surveillance program.

11 ". . . . .

12 "J. If respondent violates probation in any  
13 respect, the BPM, after giving respondent notice and  
14 the opportunity to be heard, may revoke probation and  
15 carry out the disciplinary order that was stayed. If  
16 an accusation or petition to revoke probation is filed  
17 against respondent during probation, the BPM shall have  
18 continuing jurisdiction until the matter is final, the  
19 period of probation shall be extended until the matter  
20 is final and no petition for modification of penalty  
21 shall be considered while there is an accusation or  
22 petition to revoke probation pending against  
23 respondent.

24 "K. Respondent shall submit satisfactory proof  
25 annually to the BPM of compliance with the requirement  
26 to complete fifty hours of approved continuing medical  
27 \ \ \

1 education for re-licensure during each two (2) year  
2 renewal period."

3 4. Respondent failed to comply with probation term B  
4 by his failure, within 90 days of the effective date of the  
5 stipulated order, and for the first two years of probation, to  
6 submit to the BPM for its prior approval an educational program  
7 or course related to surgical techniques, and/or the diagnosis  
8 and treatment of infections which shall not be less than 50 hours  
9 per year.

10 5. Respondent has violated probation term E. by  
11 failing to submit quarterly declarations, under penalty of  
12 perjury, on forms provided by the BPM, stating whether he has  
13 complied with all the conditions of probation. To date,  
14 respondent has only filed two quarterly declarations, one dated  
15 December 10, 1987, the other dated March 10, 1988.

16 6. Respondent has violated probation condition F. by  
17 his failure to contact the BPM's probation surveillance program  
18 concerning difficulties he was having complying with the terms  
19 and conditions of probation, and by failing to comply with  
20 probationary conditions B, E, and K.

21 7. Respondent violated probation condition K. by  
22 failing to submit satisfactory proof, annually to the BPM of  
23 compliance with the requirement to complete 50 hours of approved  
24 continuing medical education for re-licensure during each two (2)  
25 year renewal period.

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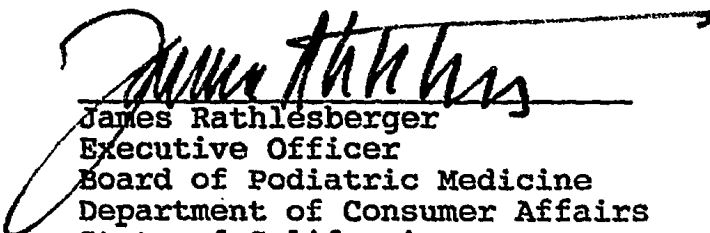
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1           WHEREFORE, complainant requests that a hearing be held  
2 concerning the matters alleged herein; and following said  
3 hearing, the Board issue a decision:

4           1. Revoking respondent's probation and reinstituting  
5 the previously stayed order of revocation of respondent's  
6 Podiatry Certificate Number E-2258;

7           2. Taking such other and further actions the Board  
8 deems appropriate to protect the public health, safety and  
9 welfare.

10           DATED: June 11, 1991

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13             
14           James Rathlesberger  
15           Executive Officer  
16           Board of Podiatric Medicine  
17           Department of Consumer Affairs  
18           State of California

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25           Complainant

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